

REMARKS

Claims 7-13, 15-22, 24, 25 and 30-35 are pending in this application per this Amendment. Independent claim 7 has been amended per the above Listing of Claims.

As currently presented, all claims concern compositions of the present invention that contain a crosslinked silicone elastomer in combination with an inorganic spherical particles selected from the group consisting of silica, boron nitride, mica, sericite, and mixtures thereof. Specifically, claim 7 has been amended to recite the weight concentrations of the crosslinked silicone elastomer and the inorganic spherical particles. Support is found at page 7, first full paragraph and at page 9, first full paragraph. Claims 11, 12, and 13 have been amended to recite the preferred concentrations for the elastomer and the inorganic spherical particles. In addition claim 7, which is the only independent composition claim now pending in this case, includes the limitation added by way of this Amendment that the ratio of the inorganic spherical particles to the crosslinked silicone elastomer is from about 10:1 to about 1:2. Support for this limitation appears in the specification at page 9, second full paragraph. As previously amended the composition of claim 7 has a particle size range of from 5 microns to 25 microns for the spherical inorganic particles. Method claim 18, which employs the compositions of claim 7, includes all of the limitations of that claim.

Section 103 Rejections

A. The April 11, 2005 Office Action states that claims 7 – 13, 15 – 22, 24, 25, and 30 – 35 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,258,345 to Rouquet et al. (“Rouquet”) in view of Manufacturing Chemist, p. 29 (June 1, 1999) (“Chemist”) and Anselmann, SPC, Soap, Perfumery, and Cosmetics, Vol. 72, Issue 1, p. 20 (January 1999) (“SPC”).

The Examiner states that Rouquet describes a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical organic polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. According to the Examiner the Rouquet

reference teaches using the elastomeric organopolysiloxane and the spherical particles in the amount of 2 – 20% of the total weight of the composition. Claim 16 is met, according to the Examiner by the disclosure of the additional ingredients in col. 5, lines 15 – 38 of the Rouquet reference. The Examiner also states that the vehicles of the present invention as recited in claim 17 and the method of using the invention are described in the reference.

The Examiner states that the Rouquet reference fails to teach the inorganic spherical particles recited in claim 7 and accordingly further relies on the teachings of Chemist and SPC. According to the Examiner Chmeist teaches Ronasphere LDP from Merck, a cosmetic pigment spherical filler of silica coated with titanium dioxide and iron oxide, as providing optical reduction of lines and wrinkles, and the effect of making the skin appear smoother. The particle size of Ronasphere LDP is stated to be less than 25 microns with a particle distribution of 4 to 7 microns. SPC is cited as teaching 1 to 10% Ronasphere LDP in cosmetic formulations. The Examiner concludes that it would be obvious to modify the compositions of Rouquet by the teachings of Chemist and SPC. Applicant disagrees and respectfully traverses this ground of rejection.

First, Ronasphere LDP is not a spherical silicone particle as required by the present invention. Rather, Ronasphere LDP is a pigment particle comprised of a coating of titanium dioxide and iron oxide on a silica core and is intended to impart a coloration to the skin. Second, the Rouquet reference utilizes organic polymeric spherical particles, and there is no suggestion to substitute such organic-based particles for the inorganic particles of the present invention. Lastly, there is no suggestion in the art of record to provide a cosmetic composition in which the ratio of the inorganic spherical particles of the present invention having a particle size of 5 to 25 microns to the crosslinked silicone elastomers is from about 10:1 to about 1:2.

B. Claims 7 – 13, 15 – 22, 24, 25, and 30 – 35 were rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 6,258,345 to Rouquet et al. (“Rouquet”) in view of U.S. Patent No. 5,658,579 to LaFleur et al. (“LaFleur”).

The Examiner states that Rouquet discloses compositions containing an elastomeric organopolysiloxane in combination with organic spherical particles. The Examiner admits, however, that Rouquet fails to teach inorganic spherical particles having the recited particle size range limitation. According to the Examiner, this deficiency of Rouquet is resolved by LaFleur, which concerns compositions comprising talc powders having specified particle size distributions. The Examiner states that the specification teaches the functional equivalency of talc and silica.

As previously amended per the Amendment filed December 8, 2004, Claim 7 concerns inorganic particles having a particle size range of from 5 microns to 25 microns that are spherical, said particles being selected from the group consisting of silica, boron nitride, mica, serecite, and mixtures thereof. Talc is specifically excluded from claim 7.

In the response filed May 13, 2004, Applicant submitted information concerning talc; namely, excerpts from the Kirk-Othmer Encyclopedia of Chemical Technology; Talc Mineral Data from Excalibur Mineral Company; Cuillo, Talc Shape and Form meet Function, Paint and Coating 2nd Mag., Jan. 2003, and information from the IMA-Europe website in which the nature of talc was explored. Talc was described in these documents as being extremely soft in light of its plate-like, flaky morphology. Thus, talc is quite different in morphology than the other species recited in the Markush group of spherical particles.

In addition there is no reason to conclude that the talc of LaFleur is anything but flaky and plate-like, in light of this morphology. Accordingly, there is absolutely no reason why one of ordinary skill in the art would look to LaFleur to obtain cosmetic compositions containing a spherical inorganic particle.

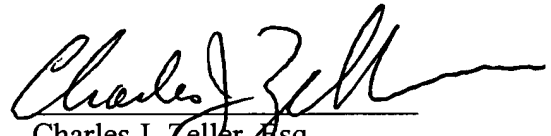
There is further no reason why one of ordinary skill would look to replace the organic polymeric spherical particles of Rouquet with the flaky, plate-like talc particles of LaFleur. Moreover, one of ordinary skill has no guidance as to how much talc should be utilized in the composition of Rouquet, since talc is inorganic, while the polymeric particles of Rouquet are organic. Further, LaFleur does not state how much talc can be used, except in the examples in

which talc comprises over 75% by weight of the composition. Clearly, one of ordinary skill could not rely on LaFleur to modify Rouquet.

For all of the reasons set forth above, it is respectfully submitted that the claims of the present invention are patentable over the cited combination of references and are in condition for allowance. If there is any item that the Examiner would like to discuss prior to passing this application to allowance, please do not hesitate to contact the undersigned attorney.

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